

REMARKS

Applicants thank Examiner Mohandesu for the courtesies extended to the undersigned during the telephone interview of April 19, 2006, at which time selected issues raised in the Office Action mailed December 29, 2005 were discussed. A summary of the telephone interview is found in the Interview Summary mailed April 27, 2006, and is supplemented in the following discussion.

The Office Action states that Applicants' arguments, see Remarks filed September 19, 2005, with respect to the rejections of claims 1-5, 10, 14, 15, and 17-20 have been fully considered and are persuasive, and that the rejection under 35 U.S.C. § 102/103 is withdrawn and the finality of the previous Office Action is withdrawn. The Office Action further states that the after final Amendment filed September 9, 2005 has been entered.

Claims 3-5 and 17-24 are in the instant application. No claims are allowed or indicated allowable.

Claims 3-5 and 17-24 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 10-23 of co-pending Application No. 10/493,877. The Office Action indicates that this is a provisional obviousness-type double patenting rejection because the conflicting claims have not, in fact, been patented.

During the telephone interview, the undersigned advised Examiner Mohandesu that no claims are allowed or indicated allowable in co-pending Application No. 10/493,877. An Amendment amending the claims in Application No. 10/493,877 was mailed on May 3, 2006. The undersigned has not been advised that the Patent Office has responded to the Amendment. Applicants believe that the claims of this application and the claims of the Amendment mailed May 3, 2006 in Application No. 10/493,877 are not identical and are patentably distinct.

Based on the foregoing, Applicants respectfully request that the Amendment filed in Application No. 10/493,877 be considered before further action is taken in this matter of non-statutory obviousness-type double patenting.

To the best of Applicants' knowledge, Applicant have disclosed all information known to Applicants which is material to the examination of the instant application in accordance with 37 CFR § 1.56.

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Applicants note the similarity of the material presented on page 4 to page 7, paragraph 1 of the Office Action in the instant application and the material presented in the Office Action in Application No. 10/493,877, and believe that the material presented on page 4 to page 7, paragraph 1 of the Office Action in the instant application is more relevant to the claims of Application No. 10/493,877 than the claims of the instant application. Notwithstanding the foregoing, Applicants will address each of the issues raised in the Office Action as they are applicable to the claims of the instant application.

Applicants have studied paragraph 5 on page 4 of the Office Action relating to "Claim Language Interpretation" and note that the figure shown in paragraph 5 of the Office Action is Figure 7 of Application No. 10/493,877 and is not Figure 7 of the instant application.

Based on the foregoing, Applicants respectfully submit that the "Claim Language Interpretation" of paragraph 5 of the Office Action is not relevant to the claims of the instant application and should be disregarded.

Claims 3, 17-21, and 24 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,261,572 to Strater (hereinafter also referred to as "Strater"). Applicants respectfully traverse the rejection of claims 3, 17-21, and 24 and respectfully request reconsideration of the rejection.

Claims 3, 18-21, and 24 are dependent on claim 17. Claim 17 recites an eye drop container having, among other things, a flexible hollow bottle having a closed end for containing a liquid and a dispensing body portion having a tip end spaced from the closed end. The hollow body portion and the dispensing body portion are integrally and unitarily formed as one piece, with the liquid free to move within the container between the flexible hollow body portion and the dispensing portion. Strater, on the other hand, discloses a dropper bottle having a plastic bottle 10 and an adapter 18. The adapter has a plug part 19 that fits within the mouth of the plastic bottle. When the plastic bottle is delivered to the customer, a needle is dropped into the plastic body, and the adapter and cover are put in place on the bottle (see column 2, lines 33-38 of Strater). As can be appreciated, the disclosure of Strater teaches away from the eye drop container recited in Applicants' claim 17 having a flexible hollow body and a dispensing body portion integrally and unitarily formed as one piece.

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Regarding claim 23, the Office Action alleges that Strater discloses a flexible plastic dispenser bottle/container 10 capable of dispensing any type of liquid drops, and a screw cover/cap 12 that is screwed onto the bottle/container. Applicants note that claim 23 is not included in the rejection of the claims under 35 U.S.C. § 102(b) but is rejected under 35 U.S.C. § 103(a) discussed below. Nevertheless, Applicants will respond to this reference to claim 23.

Applicants' claim 23 is dependent on independent claim 17 discussed above, and claim 23 recites that the tip end of the external surface of the first hollow body segment of the dispensing body of the eye drop container has a bowl-shaped curved surface that is free of burrs.

Applicants respectfully submit that Strater does not anticipate Applicants' claim 23 because there is no teaching in Strater that the adapter 18 of Strater is free of burrs. Further, Applicants respectfully submit that the surface condition of the adapter of Strater is not relevant to the container design of Strater because a screw cover 12 is mounted over the adapter 18 and access to the interior of the plastic body 10 is provided by the passage 23 and the needle 16 extending through the screw cover.

Regarding claims 3 and 20, the Office Action alleges that Strater discloses male thread/third convex guide portion 11, wherein the male thread/guide portion guides the cap when the cap is mounted. Claims 3 and 20 depend from claim 17 discussed above where it was shown that Strater does not anticipate the eye drop container recited in claim 17.

Based on the foregoing, Applicants respectfully request withdrawal of the rejection of claims 3, 17-21, and 24 under 35 U.S.C. § 102(b) as being anticipated by Strater.

Claims 4, 5, 22, and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Strater. Applicants respectfully traverse the rejection of claims 4, 5, 22, and 23 and respectfully request reconsideration thereof.

Claims 4, 5, 22, and 23 depend from claim 17. Claims 17 and 23, and Strater were discussed above.

The Office Action states that Strater does not disclose a concave portion depth range or tip opening diameter, and alleges that it would have been obvious to one having ordinary skill in the art to modify Strater to contain these ranges since it has been held that discovering an optimum value of a result effect variable involves only routine skill in the art.

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Applicants respectfully submit that one skilled in the art would not look to optimize the depth range and the tip opening diameter of the adapter of Strater because the fluid moving out of the bottle of Strater moves through a needle 16. If optimization is needed, one skilled in the art would optimize the inside diameter and length of the needle, and not the second body segment of the dispensing body portion as recited in Applicants' claims 3 and 4.

The Office Action further alleges that the product-by-process limitations of claims 22 and 23 result in no structure that is different from U.S. Patent No. 5,076,474 to Hansen (hereinafter also referred to as "Hansen"). Applicants note that the Office Action has not identified the relationship between Strater and Hansen, nevertheless, Applicants will address this rejection of claims 22 and 23.

Claim 23 recites:

23. The eye drop container as defined in claim 17, wherein the tip end of the external surface has a bowl-shaped curved surface that is free of burrs.

Applicants respectfully submit that claim 23 does not recite product-by-process limitations, and the eye drop container recited in claim 23 is presented in classical article format.

Regarding claim 22, the recitation of "blow molding or vacuum molding" references processes, however, claim 22 recites a structural limitation that is the result of the process, namely that "the tip end of the external surface has a bowl-shaped curved surface formed by the elimination of burrs." Applicants respectfully submit that claim 22 is not a product-by-process claim of the type addressed in the holding of *In re Boesche and Slaney*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Based on the foregoing, Applicants respectfully request withdrawal of the rejection of claims 4, 5, 22, and 23 under 35 U.S.C. § 103(a) as being unpatentable over Strater, and respectfully request allowance of claims 3-5 and 17-24.

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This Amendment represents a sincere effort to place this case in condition for allowance. In the event issues remain, the Examiner is invited to call the undersigned before further action is taken on the case.

Respectfully submitted,
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